

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAYRAN MOHAMMAD OSKUIE,

Petitioner,

v.

EOP,

Respondent.

No. 2:22-cv-1107 WBS CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is detained at Atascadero State Hospital and proceeding pro se. On March 1, 2023, the court dismissed petitioner's original petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 with leave to amend. Petitioner has filed an amended petition. Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

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1 After reviewing the amended petition for writ of habeas corpus, the court finds that
2 petitioner has failed to exhaust state court remedies. There is no allegation that his claims have
3 been presented to the California Supreme Court. Further, there is no allegation that state court
4 remedies are no longer available to petitioner. Accordingly, the petition should be dismissed
5 without prejudice.¹

6 Good cause appearing, IT IS HEREBY RECOMMENDED that petitioner's amended
7 petition for a writ of habeas corpus (ECF No. 16) be dismissed for failure to exhaust state
8 remedies.

9 These findings and recommendations will be submitted to the United States District Judge
10 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, petitioner may file written
12 objections with the court. The document should be captioned "Objections to Findings and
13 Recommendations." Petitioner is advised that failure to file objections within the specified
14 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
15 (9th Cir. 1991). If petitioner files objections, he shall also address whether a certificate of
16 appealability should issue and, if so, why and as to which issues(s). Where, as here, the petition
17 was dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner
18 can show: (1) 'that jurists of reason would find it debatable whether the district court was correct
19 in its procedural ruling'; and (2) that jurists of reason would find it debatable whether the petition
20 states a valid claim of the denial of a constitutional right.'" Morris v. Woodford, 229 F.3d 775,
21 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Petitioner is advised

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25 ¹ Petitioner is cautioned that the habeas corpus statute imposes a one-year limitations period for
26 filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will
27 start to run on the date on which the state court judgment became final by the conclusion of direct
28 review or the expiration of time for seeking direct review, although the statute of limitations is
tollled while a properly filed application for state post-conviction or other collateral review is
pending. 28 U.S.C. § 2244(d).

1 that failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: April 4, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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